

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4715 of 2001
With
CROSS OBJECTION (STAMP NUMBER) No. 272 of 2001
In
FIRST APPEAL No. 4715 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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ORIENTAL INSURANCE CO.LTD. - Appellant(s)
Versus
BHANUBHAI ISHWARBHAI MISTRY & 2 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR RAJESH K DESAI for Defendant(s) : 1 - 2.
NOTICE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 05/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal and the cross objections are directed against the judgment and award dated 13.6.2001 passed by the Motor Accident Claims Tribunal (Aux.), Nadiad in MAC Petition No. 69 of 1999 awarding compensation of Rs.4,84,500/- to respondent Nos. 1 and 2 herein (original claimants) for the death of their son in a motor vehicle accident involving the motor cycle insured by the appellant – Insurance Company. The award was made in a petition under Section 163A of the Motor Vehicles Act, 1988.

2. On 8.6.1999, at about 2.30 AM, on National Highway No. 8 in Kheda District, the deceased was travelling as a pillion rider when an unknown vehicle collided with the motor cycle. The deceased sustained serious injuries and succumbed to the same. The parents of the deceased filed the claim petition for compensation of Rs.7,04,772/-. Both the owner and the Insurance Company (appellant herein) were served with the notice. The Insurance Company filed its written statement resisting the claim and contended that the deceased himself was driving the motor cycle and, therefore, the claim petition was not maintainable. The Insurance Company, however, did not seek permission of the Tribunal under Section 170 of the Act for raising defences other than the

statutory defences permissible under the proviso to Section 149(2) of the Act. After recording the case of the claimants that the deceased was a pillion rider and the case of the Insurance Company that the deceased himself was driving the motor cycle, the Tribunal did not give any specific finding, but relying on the decision of a Division Bench of this Court in *New India Assurance Co. Ltd. vs. Muna May Basant*, 2001 (1) GLR 915, the Tribunal held that the heirs of the deceased driver are also entitled to get compensation under Section 163A of the Act.

3. On the question of quantum of compensation, the Tribunal considered the evidence led by the claimants being the salary certificate indicating that the monthly income of the deceased was Rs.4,862/-. Having regard to the decision of the Apex Court in *Oriental Insurance Co. Ltd. vs. Hansrajbhai V Kodala*, (2001) 5 SCC 175 = 2001 ACJ 827, the Tribunal assessed the income of the deceased at Rs.40,000/- per annum for the purpose of calculation of the compensation. On that basis, after deducting one-third income for the expenses of the deceased, and adopting the multiplier of 18 (as the deceased was 29 years old on the date of the accident), the Tribunal computed the compensation for loss of dependency at Rs.4,80,000/-. Adding thereto, Rs.2,000/- for funeral expenses and Rs.2,500/- for loss to the estate, the Tribunal made the award of total compensation of Rs.4,84,500/- with interest at the rate of 9% per annum from the date of the claim

petition till realization.

4. While the Insurance Company of the motor cycle has filed the First Appeal for challenging the award mainly on the ground that the deceased himself was driving the motor cycle and was a tort-feasor, the claimants – parents of the deceased, have filed the cross objections for enhancement of the compensation amount.

5. We have heard Mr RH Mehta, learned counsel for the appellant – Insurance Company and Mr Rajesh K Desai, learned advocate for the original claimants.

6. Mr Mehta has submitted that it was the specific case of the Insurance Company that the deceased himself was driving the motor cycle and the Tribunal has not negatived the plea of the Insurance Company. He has submitted that since the deceased himself was driving the motor cycle and the accident resulted from his negligence, his heirs ought not to be permitted to claim compensation.

7. The same contention urged on behalf of the Insurance Company was also urged before and negatived by another Division Bench of this Court in *New India Assurance Co. Ltd. vs. Muna May Basant*, 2001 (1) GLR 915. It was also raised before and turned down by yet another Bench of this Court in *RV Chudasma vs. Hansrajbhai V Kodala*, 1999 (1) GLR 631. Apart from the fact that the principle laid down by this Court

in the case of Muna May Basant has not been disturbed by any subsequent decision, even when the decision of this Court in Hansrajbhai Kodala was taken in appeal, the Apex Court, while holding that the compensation under Section 163A of the Act is final compensation and not interim compensation, did not disturb the view taken by this Court that the right of the heirs of a deceased driver to get compensation under Section 163A of the Act cannot be defeated on the ground that the deceased himself was a tort-feasor. It has been held that the Legislature having specifically made the question of negligence irrelevant in a petition claiming compensation under Section 163A of the Act, it is not open to the owner/Insurance Company to dispute the liability to pay compensation by raising the plea about negligence of the driver of the vehicle. This controversy has also been recently examined by this Court in Bajaj Allianz General Insurance Co. Ltd. vs. Belaben (First Appeal No. 4104 of 2006 decided on 14.12.2006) and it has been held that the statutory right of the heirs of the deceased driver to get compensation under Section 163A of the Act cannot be defeated on any such ground available under the common law.

8. Relying on the decision of the Apex Court in Deepal Girishbhai Soni vs. United India Insurance Co. Ltd., 2004 ACJ 934 = 2004(3) SCC 385, Mr Mehta then sought to urge that as per the claimants' case the income of the deceased was more than Rs.40,000/- and, therefore, the claim petition was not maintainable.

9. Since the Insurance Company had not obtained the permission under Section 170 of the Act, we have not permitted the Insurance Company to raise this contention before us in this appeal. Even otherwise, as per the settled legal position, the compensation has to be awarded on the basis of the net income of the deceased on the date of the accident and, therefore also, we are not inclined to disturb the award on any such ground, when the Tribunal has assessed the net income of the deceased at Rs.40,000/- per annum for the purpose of computation of compensation.

10. We, therefore, do not find any merit in the First Appeal filed by the Insurance Company.

11. Coming to the cross objections filed by the claimants, since the Tribunal has taken the income of the deceased at Rs.40,000/- per annum and awarded maximum compensation amount awardable under Section 163A of the Act, there is no scope for any upward revision of the compensation amount. Hence, the cross objections also deserve to be dismissed.

12. In the result, the appeal is dismissed and the cross objections are also dismissed.

[M.S. SHAH, J.]

[AKIL KURESHI, J.]

sundar/-